No. 80588-1

SUPREME COURT,
OF THE STATE OF WASHINGTON

SEATTLE HOUSING AND RESOURCE EFFORT/WOMEN'S HOUSING EQUALITY AND ENHANCEMENT PROJECT, a Washington Non-Profit Corporation,

Petitioner,

v.

CITY OF WOODINVILLE, a Municipal Corporation,

Respondent.

CITY OF WOODINVILLE RESPONSE TO AMICUS CURIAE MEMORANDUM IN SUPPORT OF PETITION FOR REVIEW

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A. STATEMENT OF THE CASE

Respondent City of Woodinville incorporates by reference the statement of the case set forth in the City's Answer to Petitions for Review dated September 12, 2007.

B. ARGUMENT

1. Amicus Curiae's Arguments Regarding RULIPA Do Not Satisfy Any of the Criteria for Acceptance of Review Under RAP 13.4(b).

In support of the Petition for Discretionary Review submitted by North Shore United Church of Christ (NUCC), amicus curiae Church Council of Greater Seattle *et al* argues that the Court of Appeals committed multiple errors of law in interpreting and applying the Religious Land Use and Institutionalized Persons Act (RLUIPA). Amicus further argues that the Supreme Court should accept review in order to prevent local governments, religious institutions and lower courts from relying upon the Court of Appeals' decision.

For several reasons, these arguments fail to satisfy the standards for acceptance of review by this Court under RAP 13.4(b). First, amicus fails to cite *any* decision of the Supreme Court — or another division of the Washington Court of Appeals — that conflicts with the appellate court's interpretation of RLUIPA in the instant litigation. Second, since RLUIPA is a federal statute, the interpretation clearly implicates no question of law under the Washington Constitution. Nor is any question

of law under the United States Constitution raised in amicus curiae's memorandum. Finally, neither NUCC nor amicus can identify an issue of substantial public interest that would warrant resolution by the Supreme Court. Amicus curiae does not — and cannot — cite a single Ninth Circuit case that conflicts with the Court of Appeals' interpretation of RLUIPA. The issues implicated in this appeal simply do not satisfy the criteria for discretionary review under RAP 13.4(b), and this Court should decline review accordingly.

It bears emphasis that the Court of Appeals relied upon the Ninth Circuit's most current decisions for both its interpretation of RLUIPA and its application of that statute to the factual situation under review. *See City of Woodinville v. Northshore United Church of Christ,* 139 Wn. App. 639, 655-60, 162 P.3d 427 (2007). Specifically, the court cited and analyzed *Guru Nanak Sikh Society of Yuba City v. County of Sutter*, 456 F.3d 978, 988 (9th Cir. 2006), and *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024 (9th Cir. 2004), in reaching its conclusion. *Id.* at 657. In contrast, amicus relies primarily upon older case law from *other* federal circuits.[1] Amicus curiae's proffered theories disregard, and are inconsistent with, the more recent controlling precedent from the Ninth Circuit. The persuasive value of these arguments is thus suspect at best.

Significantly, amicus curiae also misstates several of the facts underlying this litigation. Contrary to amicus curiae's suggestion, the

[1] *See* Memorandum of Amicus Curiae at 2 - 6.

factual basis for the appellate court's determination that homeless encampments are not an accessory use of church property under the Woodinville Municipal Code (WMC) hardly undermines the court's observation that the Church failed to show that its inability to host Tent City 4 outdoors prevented it from effectively ministering to the homeless on its property by using the indoor church buildings. *City of Woodinville*, 139 Wn. App at 658. The WMC allows accessory uses, and the Court of Appeals noted that a "church" is defined as "including accessory uses *in the primary or accessory buildings* such as religious education, reading rooms, assembly rooms, and residences for nuns and clergy, but excluding facilities for training of religious orders." *Id.* at 660 (Emphasis in original).

Also noteworthy is the Court of Appeals' clarification that determining whether a local zoning action might substantially burden religious activity necessarily requires a fact-based inquiry. As the court explained, "our conclusion here does not necessarily apply to every set of circumstances involving religious activity in sheltering the homeless." *Id.* at 656. The application of the Court of Appeals' holding to other, future factual scenarios is thus limited by the plain terms of the court's opinion. Supreme Court review is not necessary in order to prevent future reliance upon the decision, as amicus curiae erroneously contends.

2. The Court of Appeals Correctly Determined that NUCC's Failure to Provide a *Gunwall* Analysis Precluded Review of the Church's State Constitutional Claims.

Amicus curiae contends that the Court of Appeals erred by declining to consider NUCC's claims under Article. I, Section 11 of the Washington Constitution due to the Church's failure to provide a *Gunwall* analysis. *See State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986). For the reasons explained at length in the City's Answer to Petitions for Review, this argument is without merit. No reported Washington decision has addressed Article I, Section 11 of the Washington Constitution under a factual backdrop identical to that involved in the instant case. Because the *Gunwall* briefing requirement is inherently context-specific, *see, e.g., State v. Russell,* 125 Wn.2d 24, 58, 882 P.2d 747 (1994), NUCC's failure to support its constitutional claims with a detailed *Gunwall* analysis in *this* factual setting is fatal to its arguments. The Court of Appeals correctly declined to address NUCC's Article I, Section 11 arguments on this ground.

Amicus curiae nevertheless alleges that the Court of Appeals' opinion is inconsistent with this Court's recent decision in *Voters Educ. Comm'n. v. Wash. St. Public Disclosure Comm.*, __ Wn.2d __, 166 P.3d 1174, 1187 n.16 (2007). This argument is unpersuasive. The Court of Appeals' decision does not conflict with *Voters Educ. Comm'n* because this Court's precedent does not establish that a separate and independent

analysis of a state constitutional claim is warranted in the *specific* context of this case. The Court of Appeals correctly acknowledged this point by noting that the difference between the state and federal constitutions' protection of religious freedom in the context of satisfying *zoning* code requirements has not yet been clearly established. *City of Woodinville*, 139 Wn. App. at 654 & n.27 (citing *Open Door Baptist Church v. Clark County*, 140 Wn.2d 143, 999 P.2d 33 (2000), at 151-52 n.6)).

Moreover, even assuming *arguendo* that the Court of Appeals erred by requiring a *Gunwall* analysis in the instant case, the error was clearly harmless. Substantively, NUCC's legal arguments regarding the City's zoning and permitting regulations fail as a matter of law. Neither the Church or amicus curiae have demonstrated the "very specific showing of hardship to justify exemption from land use restrictions." *North Pacific Union Conference Ass'n of Seventh Day Adventists v. Clark County*, 118, Wn. App. 22, 32, 74 P.3d 140 (2003) (citing *Open Door Baptist*, 140 Wn.2d at 169)).

3. Constitutional Review Is Unnecessary Since the Court of Appeals' Decision Is Supported by the Parties' Written Agreement.

The Court of Appeals affirmed the trial court's interpretation of the 2004 written agreement between the parties. *City of Woodinville*, 139 Wn. App. at 650-653. As the appellate court correctly concluded, the 2004 agreement unambiguously required that before any future relocation of the

Tent City 4 encampment within Woodinville occurred, the Church and SHARE/WHEEL must: (1) allow sufficient time in the application process for public notice, public comment and due process of the permit application, and (2) secure a valid temporary use permit from the City. *Id.* at 651-53. It is undisputed that Tent City 4's relocation to Woodinville in May 2006 occurred *without* the requisite permit and *without* sufficient time provided for meaningful public notice, comment and due process. *Id.* at 652-53.

Both the trial court and the Court of Appeals thus correctly concluded that the Church violated the provisions of the parties' 2004 agreement. *Id.* at 653. Since the Court of Appeals' decision affirming the grant of permanent injunctive relief to the City can be independently supported on this contractual basis alone, it is unnecessary for the Supreme Court to review the case on constitutional grounds. Washington precedent strongly discourages constitutional review under these circumstances:

> We adhere to the fundamental principle that if a case can be decided on nonconstitutional grounds, an appellate court should refrain from deciding constitutional issues. *See State v. Speaks,* 119 Wash.2d 204, 207, 829 P.2d 1096 (1992) (although Court of Appeals decided constitutional issue, this court declined to reach constitutional issue where case was resolvable on statutory grounds); *Tunstall v. Bergeson,* 141 Wash.2d 201, 210, 5 P.3d 691 (2000) (where issue may be resolved on statutory grounds, court will avoid deciding issue on constitutional grounds); *Tommy P. v. Bd. of*

> *County Comm'rs,* 97 Wash.2d 385, 391, 645 P.2d 697 (1982) (where case can be resolved on other grounds, court will not reach constitutional issue); *Senear v. Daily Journal-Am.,* 97 Wash.2d 148, 152, 641 P.2d 1180 (1982) (same); *Ohnstad v. City of Tacoma,* 64 Wash.2d 904, 906, 395 P.2d 97 (1964) (same); *see also Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County,* 135 Wash.2d 542, 546, 958 P.2d 962 (1998) (because the case was decided on statutory grounds, constitutional issues were not reached); *State v. Faford,* 128 Wash.2d 476, 481, 910 P.2d 447 (1996) (same); *In re Dependency of J.B.S.,* 123 Wash.2d 1, 7, 863 P.2d 1344 (1993); *In re Pers. Restraint of Moore,* 116 Wash.2d 30, 32, 803 P.2d 300 (1991) (same).

Isla Verde Intern. Holdings, Inc. v. City of Camas, 146 Wn.2d 740, 752-53, 49 P.3d 867 (2002).

Because the Court of Appeals upheld the trial court's determination that the Church and SHARE/WHEEL breached the 2004 agreement, constitutional scrutiny of the City's permitting and zoning regulations is wholly unnecessary. By its plain terms, the 2004 agreement required NUCC and SHARE/WHEEL to obtain a valid permit before relocating the Tent City 4 encampment to Woodinville, as well as requiring adequate opportunity for review and public comment. Their failure to comply with this unambiguous contractual obligation was an integral basis for the decisions of both the trial court and the Court of Appeals. Review of NUCC's constitutional claims by the Supreme Court is unwarranted in light of this independent contract ground.

C. CONCLUSION

The memorandum submitted by amicus curiae does not support acceptance of review by the Supreme Court under RAP 13.4(b). The Petition for Review filed by the Church should be denied.

RESPECTFULLY SUBMITTED this 27th day of November, 2007.

Respectfully submitted,

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